CITIBANK BHD

v.

MOHAMAD KHALID FARZALUR RAHAMAN & ORS

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
SITI NORMA YAAKOB JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: W-01-16-2000]
4 JULY 2000

LAND LAW: *Charge - Notice of default - Form 16D - Notice to remedy breach within seven days - Whether parties can contractually agree to a period of less than 30 days - Whether provision a mandatory requirement - National Land Code 1965, s. 254(1)*

STATUTORY INTERPRETATION: *Construction of statute - Rules of interpretation - Mischief rule - Obligation to look at previous state of law - National Land Code 1965, s. 254(1)*

The respondents charged their property to the appellant as security for a loan. As the respondents defaulted on the loan repayment, the appellant served on them a 16D notice, giving them a period of seven days to remedy their breach. This period was prescribed in the charge annexure. The respondents failed to comply with the notice. The appellant then commenced foreclosure proceedings before the Land Administrator. The Land Administrator ordered the property to be sold by public auction. The respondents then took out an originating summons praying for, *inter alia,* a declaration that the order for sale was null and void. In the High Court, the respondents submitted that: (i) s. 254(1) National Land Code 1965 ('NLC') called for a minimum period of one month's notice; and (ii) a chargee could not contract out of the provisions by agreeing to a notice period of less than one month. The High Court judge allowed the application. The appellant appealed.

Held:
Per Gopal Sri Ram JCA

[1] The trial judge's interpretation of s. 254(1) NLC was wrong.

[2] The statement in *Kimlin* that the provisions of the NLC cannot be contracted out by a chargor was made in quite a different context. It was made in the context of an attempt by a chargee to completely bypass those provisions of the NLC that mandatorily require judicial sale of charged

property. Nowhere in the judgment of *Kimlin* was there any reference to an inability on the part of a registered chargor to agree to a lesser notice period.

[3] There was a serious and fundamental misunderstanding in the mind of the learned judge as to the nature and content of the rule of interpretation he was applying to the instant case.

[4] If it was the learned judge's intention to apply the mischief rule of interpretation, he would be obliged to look at the previous state of the law. However, nowhere in his judgment did he examine the position before the enactment of s. 254(1) NLC or sufficiently address his mind to the true purpose for which the provision was enacted. These omissions amounted to a serious non-direction amounting to a misdirection of law. It fundamentally flawed the conclusion arrived at by the learned judge.

[5] By examining the old s. 138(i)(a) Land Code (Cap 138), it is plain that when Parliament enacted s. 254(1) NLC and employed therein the words "or such alternative period as may be specified in the charge", it clearly intended by that phrase to alter the law by enabling a chargee to impose a period of less than a month. Therefore, s. 254(1) NLC expressly permits a chargor by contract to accept a statutory notice of less than one month.

[6] The close similarity in approach to the question of notice in s. 148 Land Code (Sarawak) in *Citibank NA v. Jong Tze Khiok & Anor* and s. 254(1) NLC fairly justifies the conclusion that both enactments intended the same result. Had the learned judge adopted the formula that it is the duty of the court to render an interpretation that does no violence to the language of an Act of Parliament, he would not have fallen into error.

[Appeal allowed; orders of High Court set aside.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Responden-responden menggadaikan hartanah mereka kepada perayu sebagai jaminan kepada satu pinjaman. Oleh kerana responden-responden ingkar dalam pembayaran balik pinjaman tersebut, perayu telah menyerahkan ke atas mereka satu Notis 16D, yang memberi tempoh masa selama tujuh hari untuk mereka meremedikan pengingkaran tersebut. Tempoh masa tersebut telah diperuntukkan didalam lampiran gadaian. Responden-responden gagal mematuhi notis tersebut. Perayu kemudiannya memulakan satu prosiding penutupan awal dihadapan Pentadbir Tanah. Pentadbir Tanah telah

memerintahkan agar hartanah tersebut dijual secara lelongan awam. Responden-responden kemudiannya mengeluarkan satu saman pemula memohon antara lain, satu perisytiharan bahawa perintah jualan tersebut batal dan tak sah. Di Mahkamah Tinggi, responden-responden menghujahkan bahawa (i) s. 254(1) Kanun Tanah Negara 1965 (KTN) memperuntukkan tempoh masa minima selama satu bulan notis dan (ii) pemegang gadaian tidak boleh kontrak keluar dari peruntukan-peruntukan dengan bersetuju kepada satu notis yang kurang dari satu bulan. Hakim Mahkamah Tinggi membenarkan permohonan tersebut. Perayu merayu.

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Hakim bicara khilaf dalam mentafsir s. 254(1) KTN.

[2] Pernyataan di dalam *Kimlin* bahawa peruntukan-peruntukan KTN tidak boleh dikontrak keluar oleh penggadai dibuat di dalam konteks yang berbeza. Ianya dibuat di dalam konteks dimana terdapat percubaan oleh pemegang gadaian untuk melangkau peruntukan-peruntukan KTN yang mewajibkan jualan kehakiman hartanah yang digadai. Tidak terdapat sebarang rujukan di dalam penghakiman *Kimlin* yang mengatakan bahawa seorang penggadai berdaftar tidak boleh bersetuju kepada satu tempoh masa notis yang lebih singkat.

[3] Terdapat satu khilaf yang serius dan utama pada pihak yang arif hakim Mahkamah Tinggi terhadap jenis dan kandungan rukun tafsiran yang digunapakainya di dalam kes semasa.

[4] Jika ianya niat yang arif hakim untuk menggunapakai rukun elak mudarat dalam mentafsir peruntukan tersebut, maka beliau hendaklah melihat keadaan undang-undang sebelum ini. Akan tetapi, tidak terdapat di dalam penghakiman beliau dimana beliau meneliti keadaan sebelum penggubalan s. 254(1) atau dimana beliau meneliti tujuan sebenar peruntukan tersebut digubal. Peninggalan ini adalah satu ketakarahan yang serius yang boleh dimaksudkan sebagai satu salah arah undang-undang. Ia pada asasnya telah mencacatkan keputusan yang dicapai oleh yang arif hakim.

[5] Dengan meneliti s. 138(i)(a) Kanun Tanah (Cap 138) yang dahulu, adalah jelas bahawa apabila Parlimen menggubal s. 254(1) KTN dan menggunakan didalamnya perkataan “or such alternative period as may be specified in the charge”, ia dengan jelas berniat bahawa ungkapan tersebut akan meminda undang-undang dengan membenarkan pemegang gadai mengenakan satu jangkamasa yang kurang dari satu bulan. Dari itu, s. 254(1) secara nyata membenarkan seorang penggadai secara kontrak menerima notis berkanun yang kurang dari satu bulan.

[6] Pendekatan yang serupa berkenaan dengan persoalan notis di dalam s. 148 Kanun Tanah Sarawak di dalam *Citibankbank NA v. Tong Tze Khiok & Anor* dan s. 254(1) KTN memberikan justifikasi untuk memutuskan bahawa kedua-dua enakmen tersebut mempunyai niat untuk mencapai keputusan yang sama. Seandainya yang arif hakim menggunapakai formula bahawa ianya adalah tugas mahkamah untuk membuat tafsiran yang tidak menyusahkan bahawa sesuatu akta parlimen, beliau mungkin tidak terjebak dalam kesilapan ini.

[Rayuan dibenarkan; perintah Mahkamah Tinggi dibatalkan.]

Case(s) referred to:
Belay v. Saskatchewan Government Insurance [1992] OR (3d) 371 ***(refd)***
Citibank NA v. Jong Tze Khiok & Anor [1993] 4 CLJ 325 ***(refd)***
Heydon's case [1584] 76 ER 637 ***(refd)***
John Burke Ltd v. Insurance Commissioner [1963] Qd R 587 ***(refd)***
Kimlin Housing Development Sdn Bhd v. Bank Bumiputra (M) Bhd & Ors [1997] 3 CLJ 274 ***(dist)***
Lim Phin Khian v. Kho Su Ming [1996] 1 CLJ 529 ***(refd)***
Mahammed Hushen v. Jamini Nath AIR [1938] Cal 97 ***(refd)***
Pepper v. Hart [1993] 1 All ER 42 ***(refd)***
The Eastman Photographic Materials Co Ltd v. The Comptroller-General of Patents [1898] AC 571 ***(refd)***

Legislation referred to:
Interpretation Acts 1948 & 1967, s. 17A
Land Code (Sarawak), s. 148
National Land Code 1965, s. 254(1)
Patents, Designs and Trade Marks Act 1883 [UK], s. 64
Patents, Designs and Trade Marks Act 1988 [UK], s. 10
Saskatchewan Automobile Insurance Act 1953 [Canada], s. 62
Transfer of Property Act 1882 [UK], s. 53A

For the appellant - C Abraham (J Kannaperan & Rishwant Singh with him); M/s Shearn Delamore & Co
For the 1st & 2nd respondents - K Periasamy; M/s Periasamy & Co
For the 3rd respondent - Asmabi Mohamed SFC

[Appeal from High Court, Kuala Lumpur; Originating Motion No: S2-21-151-1998]

Reported by Izzaty Izzuddin

JUDGMENT

Gopal Sri Ram JCA:

This appeal raises a short point of construction. It has to do with s. 254(1) of the National Land Code 1965 ("the Code"). That provision reads:

254(1) Where, in the case of any charge, any such breach of agreement as is mentioned in sub-section (1) of section 253 has been continued for a period of at least one month or such alternative period as may be specified in the charge, the chargee may serve on the chargor a notice in Form 16D:

(a) specifying the breach in question;

(b) requiring it to be remedied within one month of the date on which the notice is served, or such alternative period as may be specified in the charge; and

(c) warning the chargor that, if the notice is not complied with, he will take proceedings to obtain an order for sale.

This is the way in which the matter arose.

The first and second respondents are the registered proprietors of a property. We shall, for convenience, refer to them as "the borrowers". They charged the property to the appellant ("the bank") as security for a loan. But they made default. So the bank took steps to recover the loan and interest. It gave the borrowers seven days' notice to remedy the default. That was the period prescribed in the annexure to the charge. The notice was in Form 16D as required by s. 254(1) of the Code. The borrowers did not comply. The bank then commenced foreclosure proceedings before the land administrator. That is because the property is held under a Mukim or Land Office title. The land administrator allowed the bank's application and granted an order for the sale of the property by public auction. The borrowers then took out an originating summons against the bank and the land administrator. They claimed a declaration that the order for sale made by the land administrator is null and void. They also prayed for certain consequential orders. The learned judge who heard the summons granted the relief sought by the borrowers. The bank appealed.

The case for the borrowers is that the section calls for a minimum period of one month and that the words "or such alternative period" refer to a period of more than one month. They argue that s. 254 was enacted for the protection of a chargee. A chargee cannot therefore contract out of the provisions of the section by agreeing to a notice period of less than one month. As against these arguments, the bank contended that the section permitted the parties to a charge to agree to any period less than a month.

The learned judge rejected the bank's argument in these words:

> If I am to give a restricted interpretation to section 254(1) as is urged upon me by the respondents then surely the Legislature would have merely omitted that part of the provision which states, 'of at least one month' and would have merely said 'continued for a period as is specified in the charge'. Further the fact that the first option is for a period of at least one month clearly envisages that the alternative period must be in excess of that one month and nothing less. This Court must look at the mischief which had to be cured and in addition this Court will have to look at the cure provided.

Now, when the appeal was called on for hearing, we formed the view that the judge's interpretation of s. 254(1) was wrong. Accordingly, we called on counsel for the borrowers to argue why the appeal ought not to be allowed. His arguments did not persuade us that the judge was right. Accordingly, we allowed the appeal without hearing counsel for the appellant.

As may be seen, the borrowers' argument is that a chargor cannot contractually agree to accept a notice period of less than one month to remedy a breach of the terms of a charge. In support of their case, they rely very heavily upon certain observations made by the Federal Court in *Kimlin Housing Development Sdn. Bhd. v. Bank Bumiputra (M) Bhd. & Ors.* [1997] 3 CLJ 274. It is a case of much importance in more ways than one. The judge in the present case referred to it in his judgment. We will quote him. This is what he said:

> By one fell stroke of the pen the chargee has cut short the statutorily given period of time. Freedom to bargain still remains. But that freedom must be exercised harmoniously with the sole purpose of attaining the object of the need to give the statutory notice. In *Kimlin Housing Development Sdn Bhd v. Bank Bumiputra Malaysia Berhad & Ors* [1997] 2 MLJ 805, the Federal Court said in no uncertain terms that sections 254-265 of the NLC not only conferred rights upon the chargors but that they were designed 'for their protection' and that such rights could not be waived nor could the chargor contract himself out of the NLC. Therefore it is also on high authority that I come to the conclusion that whilst the chargor can accept a period of time in excess of the one month default as his period of default, the chargor cannot contract himself out of the NLC which has specifically fixed the minimum period 'of at least one month'.

Now, *Kimlin (ibid)*, was a case where a lender had taken a registered charge over immovable property as well as a debenture over all the assets of a chargor. The chargor defaulted. Later, it went into liquidation. The lender had appointed receivers and managers under a power it had reserved unto itself under the debenture. The receivers and managers had a contractual power to sell the chargor's property by private treaty. They wanted to exercise this power. But they were unsure about its exercise.

So, they applied to court for leave to sell the chargor's land. The judge who heard the application said that the receivers and managers could do so. The effect of his decision was that there was no necessity for the lender to apply to the High Court for an order for sale. In other words, the lender could by-pass the mandatory provisions of the Code. He also held that the liquidation of the chargor had no effect upon the powers of the receiver and manager. The chargor challenged these findings on appeal. The Federal Court disagreed with the judge. It reversed him. It held that a chargee of land must resort to the provisions of the Code if he wanted to realise his security. It also held that upon a winding up, the contractually appointed receivers and managers had to surrender all assets of the chargor to the liquidator. The judgment of the Federal Court which was delivered by Edgar Joseph Jr. FCJ contains two passages from upon which the borrowers in the present instance relied. We will quote them.

The first passage is at p. 294 of the report. It reads:

> It is obvious that the relevant portions of the Code – to wit, sections 254-265 – conferring the rights upon chargors aforesaid are designed for their protection. In the case of land held under a Land Office title, the form of title corresponding to Land Office title or subsidiary title, the chargee makes his application for order for sale to the Land Administrator in accordance with the procedure laid down in s. 260 et seq of the Code and these are also designed for the protection of the chargor. However, in considering such an application, the powers of the Land Administrator are limited (see, eg, *Gurpal Singh v. Kananayer* [1976] 2 MLJ 34 at p. 36). Thus, any objection as to the validity of the charge must be taken before the courts for it is no defence in the inquiry before the Land Administrator (see *Suppiah v. Ponnampalam* [1963] MLJ 202 at p. 204).

The second passage is at p. 297 and reads as follows:

> In our view, therefore, the provisions of the Code as to the rights of chargors are designed for their protection and cannot be waived; nor can the chargor contract himself out of the Code. It follows that no power of sale can be conferred by a chargor under the Code on a chargee himself by way of a debenture or power of attorney or otherwise, but proceedings must be brought by the chargee to obtain a judicial sale in accordance with the rigid procedure laid down in the Code. In such circumstances, any power of sale which purports to be conferred on a chargee himself, omitting all mention of notice and periods of default by a debenture or power of attorney and the necessity for obtaining a judicial sale would be invalid and ineffective to entitle a purchaser to be registered as owner. With respect, we must therefore hold that the case of *United Malayan Banking Corp Bhd v. Official Receiver and Liquidator of Soon Hup Seng Sdn Bhd* [1986] 1 MLJ 75 – in so far as it decides to the contrary – was wrongly decided.

With respect, we do not regard these passages as supporting the borrowers' argument that a chargor cannot by contract agree to accept a period of less than one month from the chargee to remedy a breach of the terms of the charge. The statement in the second of the passages quoted above that the provisions of the Code cannot be contracted out of by a chargor was made in quite a different context. It was made in the context of an attempt by a chargee to completely by-pass those provisions of the Code that mandatorily require a judicial sale of charged property. Nowhere in the judgment of the Federal Court is there any reference to an inability on the part of a registered chargor to agree to a lesser notice period. Indeed, the point that has arisen so acutely for consideration in the present appeal did not arise in *Kimlin.*

The judge in the present case purported to apply what he referred to as "the Golden Rule of construction" to determine the mischief which s. 254 was designed to meet. With respect, there was, in our view, a serious and fundamental misunderstanding in the mind of the learned judge as to the nature and content of the rule of interpretation he was applying to the case before him. It is therefore necessary that we say something about this.

Courts have, through their decisions devised for themselves certain guidelines and presumptions for the interpretation of statutes. Although they are now called rules of construction, they are not rules at all. They are merely guidelines. See, *Lim Phin Khian v. Kho Su Ming* [1996] 1 MLJ 1. However, eminent jurists such as Sir P.B. Maxwell and Master Wilberforce sought to analyse decided cases on statutory interpretation with a view to distilling from them the principles on which courts acted with regard to statutory interpretation. Their analysis led them to formulate four different rules of construction which they thought moved the courts to interpret statutes in a particular way. They termed these as the literal rule, the golden rule, the mischief rule and the purposive rule. More recently, Professor Rupert Cross formulated what he termed as "the unified contextual approach". This in essence combines all these so-called rules in a step by step process to discovering the meaning of statutory language. Each of the suggested methods offers a different approach to the construction of a statute. The literal rule pays attention to nothing more and nothing less than the actual words used by the statute. The golden rule permits the judicial interpreter in very limited circumstances to supply an omission in a statutory provision where the literal approach leads to absurdity or injustice. The mischief rule looks to the state of the law at the time an Act was passed to see the mischief or defect that Parliament seeks to remedy. Finally there is the purposive approach which is a refinement of the mischief rule. This requires a court to look to the purpose of an Act. What is significant is that all these differing approaches are

used to ascertain what Parliament intended to communicate when it used particular words in a statute. Despite the several available approaches, it is noteworthy that it is the purposive approach that has emerged to hold the field.

Thus, in *Pepper v. Hart* [1993] 1 All ER 42, 50, Lord Griffiths said:

> The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted.

In our jurisdiction Parliament has given effect to the common law position by requiring a court to apply the purposive approach to all statutes. The relevant provision is s. 17A of the Interpretation Acts 1948 & 1967. It reads:

> 17A. In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

To return to the present case, we note that despite the misnomer used by the judge to describe the appropriate rule of construction, the language of his judgment appears to suggest that he was looking to the mischief rule. Now, to properly apply the mischief rule, a court must have regard to what was said in *Heydon*'s case [1584] 76 ER 637. We will quote from the report of that case:

> And it was resolved by them (the judges) that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law,) four things are to be discerned and considered:
>
> 1st What was the common law before the making of the Act;
>
> 2nd What was the mischief and defect for which the common law did not provide;
>
> 3rd What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth; and
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> 4th The true reason of the remedy: and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo* (for private convenience) and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico* (for public benefit).

In the early stages of its development, the mischief rule enabled a court merely to have regard to the common law position at the time of the passing of an Act with a view to determining the aim or object of the particular statute under construction. However, by their later decisions, courts extended the rule to include the whole state of the law at the time an Act was passed to see the mischief it sought to cure. There are several examples of such cases.

In *The Eastman Photographic Materials Co. Ltd. v. The Comptroller-General of Patents* [1898] AC 571, the House of Lords examined the previous law contained in s. 64 of the Patents, Designs and Trade Marks Act 1883 when interpreting s. 10 of the Patents, Designs and Trade Marks Act 1888 which amended the former provision. (See the speech of Lord Halsbury at pp. 573-574 of the report.)

In *Mahammed Hushen v. Jamini Nath* AIR [1938] Cal. 97, Mukherjea J, when considering s. 53A of the Transfer of Property Act 1882 said (at p. 101):

> Before I come to the Act itself by which this section was introduced, it may be useful to enquire as to whether the state of law at the time when the Amending Act was passed, and the object which the Legislature had in introducing the section could throw any light upon its interpretation. This is a permissible matter to look into for the purpose of construing a statute provided it is taken with the warning that we must not strain the language of a statute unduly by attempting to bring it within the supposed intention of the Legislature (Maxwell, p. 19, Edn. 7).

Again, in *Belay v. Saskatchewan Government Insurance* [1992] OR (3d) 371, 375, Feldman J, reviewed the legislative history of the Saskatchewan Automobile Insurance Act, including the earlier legislation passed in 1953, when interpreting s. 62 of the Act to determine whether an Ontario court had jurisdiction to entertain claims under the Act.

Finally, in *John Burke Ltd. v. Insurance Commissioner* [1963] Qd. R. 587, Hanger J, took into account the workers' compensation legislation that had been in force prior to the enactment of the statute he was called upon to construe.

To return to the present case, it is trite that the provisions of the Land Code (Cap. 138) governed the relationship between a chargor and chargee of land immediately prior to the enactment of the Code. So, if it was the learned judge's intention to apply the mischief rule, he was obliged to look to the previous state of the law. Yet, nowhere in his judgment did the learned judge examine the position that obtained before the enactment of

s. 254 of the Code. Neither did he sufficiently address his mind to the true purpose for which this provision was enacted. These omissions in our view amount to a serious non-direction amounting to a misdirection of law. It fundamentally flaws the conclusion arrived at by the learned judge. It entitles us to intervene and set the matter right.

We begin by examining the state of the law prior to the enactment of the Code. The law as it then stood was encapsulated in s. 138(i)(a) of the Land Code (Cap. 138). This is what it said:

> 138(i) If default be made in the payment of the principal sum interest or periodical payment or any part thereof secured by a charge, or in the observance of any agreement expressed or implied in any charge, and such default be continued for the space of thirty days or for such other period of time as may in the charge for that purpose be expressly limited, the chargee may give to the chargor notice in writing
>
> (a) to pay within a time to be specified in the notice, **but not less than thirty days,** the money due and owing on such charge, or to observe the agreements therein expressed or implied as the case may be… (emphasis added.)

Now, it is plain from this section, particularly from the words to which we have lent emphasis, that a statutory notice to a chargor could not be less than thirty days. So, when Parliament enacted s. 254(1) of the Code and employed therein the words "or such alternative period as may be specified in the charge", it clearly intended by that phrase to alter the law by enabling a chargee to impose a period of less than a month. The Code in s. 254 therefore expressly permits a chargor by contract to accept a statutory notice of less than one month.

Before concluding, we think it appropriate to refer to the case of *Citibank NA v. Jong Tze Khiok & Anor* [1993] 4 CLJ 325. It is a decision of the Supreme Court on the equipollent s. 148 of the Sarawak Land Code (Cap 81), the third subsection of which reads as follows:

> 148(3) The notice under subsection (1) shall comply with the terms of the charge:
>
> Provided that, without prejudice to subsection (4) of section 145, if no period of notice for the purposes of this section is stipulated by the charge, not less than thirty days' notice shall be given.

Jemuri Serjan CJ (Borneo) said (at p. 331) with regard to this provision:

> Obviously, one has to look at the terms of the charge to ascertain and determine the period of the notice since sub-s (3) provides that the notice shall comply with the terms of the charge. The relevant terms of the charge relating to notice is to be found in clause 2(1) already referred to above. The period of the notice was categorically and unequivocally stipulated to be 14 days, and, in the light of the clear provisions of sub-s (3) which was complied with in the instant case, such a notice could not but be valid, and by no stretch of the imagination or other reasonable process of interpretation could the section be interpreted to require the minimum period of 30 days. We do not perceive any reasons why, under the circumstances, it was incumbent upon the High Court to seek the aid of the proviso or the legislative history of the section to arrive at the correct construction of the subsection. Clearly, there is no ambiguity in the wording of s. 148(3) to justify any resort to aid to construction of the subsection. The proviso, being intended to operate or have the effect of excepting the main provision only where no period of the notice was stipulated in the charge, did not, therefore, apply in the instant case. In the result, the notice, in our view, was valid and effective for the purpose of sub-s. (2)(c). Any other construction to the provision of s. 148(3) would do violence to the clear and unambiguous language employed in the subsection and render it meaningless.

This passage was cited to the learned judge in the present case. He reproduced it in his judgment. But he distinguished it in the following terms:

> It is obvious therefore that in *Citibank NA* the Legislature has clearly spelt out that the parties shall have the right to stipulate the period of time for compliance and if no such period of time was stipulated in the charge, only then would the proviso requiring that not less than 30 days' notice be given, would become effective. But that is not the situation in respect of the case before me.

With respect, we do not agree with the reasoning of the judge. In our view, the close similarity in approach to the question of notice in s. 148 of the Sarawak statute and s. 254 of the Code fairly justifies the conclusion that both enactments intend the same result. We may add that the judge also failed to have regard to the injunction formulated by the learned Chief Justice of Borneo in the passage quoted above: that it is the duty of a court to render an interpretation that does no violence to the language of an Act of Parliament. Had he adopted this guidance, he would not have fallen into error.

For the reasons already given the appeal was allowed. The orders made by the learned judge were set aside. The borrowers' summons was dismissed. The costs here and in the court below were awarded to the appellant bank. The deposit was ordered to be refunded to the appellant.